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U.S. Citizenship  
and Immigration  
Services

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FILE:

SRC 07 227 51427

Office: NEBRASKA SERVICE CENTER

Date:

**MAR 05 2009**

IN RE:

Petitioner:

Beneficiary:

PETITION: Immigrant Petition for Alien Worker as a Member of the Professions Holding an Advanced Degree or an Alien of Exceptional Ability Pursuant to Section 203(b)(2) of the Immigration and Nationality Act, 8 U.S.C. § 1153(b)(2)

ON BEHALF OF PETITIONER:

INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

*John F. Grissom*

John F. Grissom, Acting Chief  
Administrative Appeals Office

**DISCUSSION:** The Director, Nebraska Service Center, denied the employment-based immigrant visa petition. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be sustained and the petition will be approved.

The petitioner seeks classification pursuant to section 203(b)(2) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(2), as a member of the professions holding an advanced degree. The petitioner seeks employment as a research assistant at Washington University School of Medicine (WUSM) in St. Louis, Missouri. The petitioner asserts that an exemption from the requirement of a job offer, and thus of a labor certification, is in the national interest of the United States. The director found that the petitioner qualifies for classification as a member of the professions holding an advanced degree but that the petitioner had not established that an exemption from the requirement of a job offer would be in the national interest of the United States.

On appeal, the petitioner submits a brief from counsel and various exhibits, some of them previously submitted.

Section 203(b) of the Act states, in pertinent part:

(2) Aliens Who Are Members of the Professions Holding Advanced Degrees or Aliens of Exceptional Ability. --

(A) In General. -- Visas shall be made available . . . to qualified immigrants who are members of the professions holding advanced degrees or their equivalent or who because of their exceptional ability in the sciences, arts, or business, will substantially benefit prospectively the national economy, cultural or educational interests, or welfare of the United States, and whose services in the sciences, arts, professions, or business are sought by an employer in the United States.

(B) Waiver of Job Offer.

(i) . . . the Attorney General may, when the Attorney General deems it to be in the national interest, waive the requirements of subparagraph (A) that an alien's services in the sciences, arts, professions, or business be sought by an employer in the United States.

The director did not dispute that the petitioner qualifies as a member of the professions holding an advanced degree. The sole issue in contention is whether the petitioner has established that a waiver of the job offer requirement, and thus a labor certification, is in the national interest.

Neither the statute nor the pertinent regulations define the term "national interest." Additionally, Congress did not provide a specific definition of "in the national interest." The Committee on the Judiciary merely noted in its report to the Senate that the committee had "focused on national interest by

increasing the number and proportion of visas for immigrants who would benefit the United States economically and otherwise. . . ." S. Rep. No. 55, 101st Cong., 1st Sess., 11 (1989).

Supplementary information to the regulations implementing the Immigration Act of 1990 (IMMACT), published at 56 Fed. Reg. 60897, 60900 (November 29, 1991), states:

The Service [now U.S. Citizenship and Immigration Services] believes it appropriate to leave the application of this test as flexible as possible, although clearly an alien seeking to meet the [national interest] standard must make a showing significantly above that necessary to prove the "prospective national benefit" [required of aliens seeking to qualify as "exceptional."] The burden will rest with the alien to establish that exemption from, or waiver of, the job offer will be in the national interest. Each case is to be judged on its own merits.

*Matter of New York State Dept. of Transportation*, 22 I&N Dec. 215 (Commr. 1998), has set forth several factors which must be considered when evaluating a request for a national interest waiver. First, it must be shown that the alien seeks employment in an area of substantial intrinsic merit. Next, it must be shown that the proposed benefit will be national in scope. Finally, the petitioner seeking the waiver must establish that the alien will serve the national interest to a substantially greater degree than would an available U.S. worker having the same minimum qualifications.

It must be noted that, while the national interest waiver hinges on prospective national benefit, it clearly must be established that the alien's past record justifies projections of future benefit to the national interest. The petitioner's subjective assurance that the alien will, in the future, serve the national interest cannot suffice to establish prospective national benefit. The inclusion of the term "prospective" is used here to require future contributions by the alien, rather than to facilitate the entry of an alien with no demonstrable prior achievements, and whose benefit to the national interest would thus be entirely speculative.

We also note that the regulation at 8 C.F.R. § 204.5(k)(2) defines "exceptional ability" as "a degree of expertise significantly above that ordinarily encountered" in a given area of endeavor. By statute, aliens of exceptional ability are generally subject to the job offer/labor certification requirement; they are not exempt by virtue of their exceptional ability. Therefore, whether a given alien seeks classification as an alien of exceptional ability, or as a member of the professions holding an advanced degree, that alien cannot qualify for a waiver just by demonstrating a degree of expertise significantly above that ordinarily encountered in his or her field of expertise.

In an introductory statement accompanying the initial submission, counsel stated:

[The petitioner] has made groundbreaking achievements that have significantly impacted the whole international medical community. [The petitioner] is a stellar scientist whose current research focuses on organ transplantation including lung, heart, liver and islet. . . . [The petitioner] has made milestone research breakthroughs

in the filed [sic]. His research work has been widely cited by other scientists (26 times). . . .

In addition, major figures in the field who are independent of [the petitioner] have all recognized [the petitioner's] contributions. . . .

In view of above evidence, it is manifest that [the petitioner] is a phenomenal medical scientist. He has a substantial edge over his contemporaries and his research breakthroughs in the field have remarkably impacted the whole organ transplantation community, which is evidenced by the widespread implementation of his work by other scientists in the field around the world.

As noted by counsel, several witness letters accompanied the petition. Several witnesses identified as independent have clear ties either to the petitioner or to universities where the petitioner has trained. [REDACTED] of Histocompatibility and Immunogenetics and of the Islet Core Facility at WUSM, stated:

[The petitioner] joined my laboratory as a postdoctoral research fellow in 1999. Since one of my research interests was organ transplantation, I needed a microsurgical scientist who was proficient in cardiovascular and hepatobiliary surgery in murine transplant models. The goal of these studies is to understand the immunobiology of organs in humans.

. . . [The petitioner] soon became an indispensable member of our group. . . . He has very rare, outstanding skills in microsurgery such as heart [and] liver transplantation.

[REDACTED] stated that the petitioner "has been currently playing a very important role in our two main research projects: Liver-mediate multi-system injury and steatotic liver ischemic injury." [REDACTED] asserted that the petitioner is one of "only 2 ~ 3 fellows who can do this type of liver surgery [out of] 800 researchers in our Medical School." [REDACTED] did not elaborate, but this ratio seems to have more to do with research specialization than with the petitioner's skill.

[REDACTED] of Niigata University Medical School in Japan, where the petitioner earned his Ph.D. degree, stated:

[The petitioner's] professional skills, broad knowledge and extraordinary abilities enabled him to make contributions to the field to a degree far more substantial than that of his peers. He has successfully completed two projects independently: 1. Significance of abdominal aortic aneurysm surgery in patients more than seventy years of age. 2. High intensity transient signals (HITS) during open-heart surgery [r]elationship between HITS frequency and micro-bubbles. . . .

Overall, [the petitioner] is an exceptionally well-trained and highly motivated scientist with great ability in scientific research, committed to a career in medical research.

[REDACTED] of the Transplantation Research Center at Brigham and Women's Hospital and Boston Children's Hospital, stated:

I have no direct association with and have never met [the petitioner]. Through my professional encounter with [REDACTED] I have learned of [the petitioner's] extraordinary ability and outstanding skills in microsurgery.

[The petitioner] is an outstanding research scientist with unusual knowledge and research talent in the field. He has been playing an irreplaceable and critical role in the ongoing projects in [REDACTED] lab.

[REDACTED] at Cambridge University, United Kingdom and Professor at the National University of Singapore, stated:

I have never worked with [the petitioner] before. My first encounter with [the petitioner] took place at the organ transplantation conference [at] Washington University School of Medicine in 2005 where [the petitioner's] presentation highly impressed me. . . . [The petitioner's] research achievements . . . have achieved international acclaim.

[REDACTED] of the University of Nantes, France, stated:

I have never met [the petitioner]. However, because of our similar research interests, his successful research work has attracted my attention. . . . [The petitioner's] groundbreaking work has received considerable international attention. Many scientists including myself have cited his articles, which undoubtedly attest to the international recognition of his work.

The petitioner submitted a list of 26 articles that contained citations of the petitioner's work.

On October 15, 2007, the director issued a request for evidence, instructing the petitioner to submit "objective evidence that [the petitioner's] work has had significant impact outside [his] collaborators and mentors," such as copies of articles by other researchers, citing the petitioner's work.

In response, the petitioner submitted a letter from [REDACTED] of Nanjing University, China, to [REDACTED]. The letter begins: "How are you and your family? Can't believe it has already been two years since last we met. I'm sorry to interrupt and ask some questions concerning my research works. Would you please give me advice at your convenient time?" The

bulk of the letter concerns technical discussion of “modified isotopic mouse trachea transplantation.” Near the end of the letter, [REDACTED] asked: “I am wondering if I can test the role of ventilation in this model? . . . Could this be adequate for demonstrating the above thought?”

Counsel claimed that the above letter “proves that [the petitioner’s] research has been widely recognized and he is considered a sought-after expert [REDACTED] is the corresponding author of the work to which [the petitioner] is a major contributor.)” The letter shows that [REDACTED] was already a personal acquaintance of [REDACTED] and [REDACTED] did not mention the petitioner at all, either in the body of the letter or in the bibliographic references that followed it. We therefore cannot accept counsel’s conclusion that this letter “proves that [the petitioner] . . . is considered a sought-after expert.” The letter proves only that [REDACTED] sought the advice of [REDACTED] whom [REDACTED] had known for years.

More persuasively, [REDACTED] of Vienna Medical University, Austria, described one of the petitioner’s research papers in technical detail, and stated that the petitioner’s “research work has received considerable attention, having been the target of multi-citations by others including myself.” Supporting this claim, the petitioner submitted evidence showing that the total number of citations of the petitioner’s work, including a small number of self-citations by the petitioner’s collaborators, had risen to 33.

The director denied the petition on March 27, 2008. In the decision, the director listed various exhibits in the record, and stated: “the record indicates that petitioner’s work has been cited relatively minimal times [sic] in scholarly works.” Regarding the witness letters, the director stated that the witnesses “speak of [the petitioner’s] work only in general terms,” and “do not persuasively show that [the petitioner has] had an impact on the field” that would qualify the petitioner for the national interest waiver.

On appeal, counsel observes that the petitioner had submitted letters from a number of prominent international witnesses who have not worked with the petitioner. The petitioner submitted updated citation printouts, showing 38 citations of the petitioner’s work. This continuing and accelerating pattern of citation had already commenced prior to the filing of the petition.

Upon consideration, the AAO concludes that the increasing citation of the petitioner’s work, in conjunction with credible letters from high-ranking experts in the petitioner’s field of transplantation medicine, establish the international reputation that the petitioner has claimed. We note the director’s observation that some of the witness letters lack detail. At the same time, however, we find that the letters are not general arguments about the importance of the petitioner’s specialty or vague attestations regarding the petitioner’s promise or the quality of the laboratories where he has trained.

It does not appear to have been the intent of Congress to grant national interest waivers on the basis of the overall importance of a given field of research, rather than on the merits of the individual alien. That being said, the evidence in the record establishes that the scientific community recognizes the

significance of this petitioner's research rather than simply the general area of research. The benefit of retaining this alien's services outweighs the national interest that is inherent in the labor certification process. Therefore, on the basis of the evidence submitted, the petitioner has established that a waiver of the requirement of an approved labor certification will be in the national interest of the United States.

The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. The petitioner has sustained that burden. Accordingly, the decision of the director denying the petition will be withdrawn and the petition will be approved.

**ORDER:** The appeal is sustained and the petition is approved.